

# Notice of Allowability

Application No.

10/673,878

Examiner

Kurt Fernstrom

Applicant(s)

MOORE, BRIAN L.

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to \_\_\_\_\_.
2. ☒ The allowed claim(s) is/are 1-23.
3. ☒ The drawings filed on 29 September 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 9/29/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

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## DETAILED ACTION

### *Allowable Subject Matter*

Claims 1-23 are allowed.

The following is an examiner's statement of reasons for allowance: The prior art fails to disclose or suggest a method of playing a card game having all of the limitations of claim 1. While the claimed method bears some similarity to the popular card game War, steps pertaining to a subjective, rather than qualitative, comparison of the indicia on the cards are not disclosed or suggested by the prior art. Kenney discloses one game method which resembles War, but awards points based on objective criteria, rather than allowing players to express subjective opinions to determine gameplay. Simmons discloses a card game where players express subjective opinions pertaining to themes represented on the cards. However, there is no suggestion or motivation to combine the teachings of Simmons with those of Kenney or similar competitive games to produce the claimed invention without using impermissible hindsight. Along similar lines, Kirby discloses a game method where cards are subjectively evaluated to determine a "best matchup" for a pair of cards, but there is no suggestion in Kirby of a subjective determination of a "best card" among a plurality of cards in a competitive game. As a result, the claimed method is patentable over the prior art.

Also, methods involving subjective determinations by the user or users often raise questions of whether the subject matter is statutory under 35 USC 101, or adequately enabled under 35 USC 112. In this instance, the claims are patentable.

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One of ordinary skill, upon reading the claims and the specification, would understand how to perform the method and how the subjective evaluations are performed. Claim 1 recites that images relating to a particular theme, such as sports players, are presented on the cards. These images present some basis for the players to formulate a subjective opinion about their preferences. Claim 1 also recites that a nonplayer may offer a subjective opinion about the "best card" in the event that a majority of the players do not agree subjectively. The claimed method creates a useful, concrete and tangible result, which can be performed without undue experimentation, and thus is patentable under 35 USC 101 and 112. As a result, claim 1, and all claims dependent therefrom, are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kenney, Simmons, Kirby, Cohen, Ayisi, Poole, Levin, Malone, Setteducati and Turnali disclose various methods of playing card games.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303. The examiner can normally be reached on M-F 9:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KF  
May 27, 2004

*Kurt Fert*  
Kurt Ferstrom